

COVENANT OF DEED RESTRICTION

96 103969

Recording Requested By:

RECORDED AT REQUEST OF

Owner

American Standard Inc.

One Centennial Avenue

P.O. Box 6820

Piscataway, New Jersey 08855-6820

MAY 31 1996

AT 2 O'CLOCK P M

CONTRA COSTA COUNTY RECORDS

STEPHEN L. WEIR

COUNTY RECORDER

When Recorded, Mail to:

FEE:

82.00

Barbara J. Cook

Site Mitigation Unit

Department of Toxic Substances Control

700 Heinz Avenue

Berkeley, California 94706

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY

AMERICAN STANDARD PRODUCTS SITE, PORTION OF LAZY J RANCH
RICHMOND, CALIFORNIA

This Covenant and Agreement ("Covenant") is made on the
29th day of March, 1996 by

American Standard Inc. ("Covenantor"), who is the owner of record
of certain property situated in Richmond, County of Contra Costa,
State of California, described in Exhibit 1 attached hereto and
incorporated herein by this reference ("the Property") and by the
California Department of Toxic Substances Control ("Department"),
with reference to the following facts:

1 A. This Property contains hazardous wastes and hazardous
2 substances.

3

4

5 B. Description of Facts.

6

7 B.1 Contamination of the Property. The American Standard
8 Site consists of the following three operable units (OU): the
9 Former Waste Disposal Area (FWDA) or OU I; the Former
10 Manufacturing Facility (FMF) or OU II; and the Lazy J Ranch (LJR)
11 or OU III. The Property is within the LJR; it is located at the
12 northwest corner of the LJR. See Exhibit 2 for the location of
13 the Site and OUs. From 1927 to 1976, American Standard Inc.
14 (ASI) manufactured ceramic plumbing fixtures at the FMF; waste
15 material from ASI's manufacturing processes were disposed of at
16 the FWDA. The FWDA and the FMF are located across Giant Road
17 from the LJR. ASI did not own and use the LJR during their
18 manufacturing activities. Contamination at the LJR (including
19 the Property) was discovered in the late 1980's. Contamination
20 may have occurred in the early 1960's when the U.S. Corps of
21 Engineers realigned Rheem Creek into the present channel which
22 crosses the middle portion of the LJR. It is suspected that the
23 old channels and low lying areas at the LJR were filled with
24
25
26
27

1 contaminated materials from the FWDA. The LJR originally
2 consisted of approximately 35 acres of undeveloped land
3 (including the approximately 5-acre Property). Fill material
4 contaminated with lead and zinc on the other portions of the LJR
5 was consolidated at the Property and capped. See Exhibit 3 for
6 the location of the Property within the LJR. The maximum level
7 of lead in soils on the Property is 17,000 milligram/kilogram
8 (mg/kg); the maximum level of zinc is 13,000 mg/kg.
9
10
11

12 B.2 Exposure Pathways. The contaminants addressed in this
13 Covenant have been found in soils on the Property. These
14 substances are to be contained by the installation of a Cap
15 (described in the final Remedial Action Plan [RAP] dated
16 June 28, 1994) and the monitoring of groundwater monitoring wells.
17 If this containment system were to be damaged by unauthorized
18 excavation, breaching of the Cap, or impairment of the
19 groundwater monitoring system, occupants of the Property and
20 nearby properties and resident occupants could be exposed to the
21 contaminated soils. Exposures can take place via in-place
22 contact, surface water runoff, and wind dispersal, resulting in
23 dermal contact, inhalation, or ingestion by humans or animals.
24 The risk of public exposure is lessened by distance from
25
26
27

1 contaminants, shortened length of time of exposure, containment
2 of contaminants and mitigation measures to control exposure. The
3 purpose of the containment and mitigation measures which shall be
4 used at the Property are to eliminate any significant risks to
5 human health and the environment.
6

7 A description of potential human health and environmental
8 effects of contaminants found on the Property is described in
9 Exhibit 4.
10

11
12 B.3 Adjacent Land Uses and Population Potentially Affected.
13 The Property is located in an industrial area within the city
14 limits of Richmond. An industrial facility borders the Property
15 to the north. The Southern Pacific Railroad right-of-way and an
16 open land border the Property to the west. The Richmond Parkway
17 overpass, the remediated portion of the LJR, and the Santa Fe
18 Railroad right-of-way border the Property to the east. Rheem
19 Creek, the Richmond Parkway overpass and the clean portion of the
20 LJR border the Property to the south. See Exhibit 5 for the
21 existing land use and zoning in the LJR vicinity.
22
23

24 The nearest potentially affected populations are the
25 commercial and industrial workers to the north and south of the
26 Property. No residences are adjacent to the Property. The
27

1 nearest residential population is located across Giant Road,
2 approximately 500 feet east of the Property. The nearest
3 elementary school is located approximately 3,500 feet south of
4 the Property. San Pablo Bay lies approximately 0.5 mile west of
5 the Property.
6

7
8 B.4 General Description of Site Remediation. The remedial
9 action for the LJR (including the Property), is outlined in the
10 Final Remedial Action Plan (RAP) dated June 28, 1994, the Final
11 Remedial Design and Implementation Plan dated December 20, 1994
12 and the Final Remedial Design Modification dated December 20,
13 1995. The LJR remediation consisted of excavating the
14 contaminated soils from areas outside the Property boundary,
15 consolidating the soils at the Property, and constructing a
16 containment Cap over the Property. The emplacement of a
17 containment cap ensures protection of human health and the
18 environment by preventing exposure to lead and zinc containing
19 soils and will control water infiltration preventing potential
20 migration of these metals to surface water or groundwater while
21 the Cap is maintained.
22
23
24
25
26
27

1 C. Covenantor desires and intends that in order to protect the
2 present or future public health and safety and the environment,
3 the Property shall be used in such a manner as to avoid potential
4 harm to persons or property which may result from hazardous
5 substances and wastes which have been deposited and consolidated
6 on the Property.
7

8

9

ARTICLE I

10

11

12

GENERAL PROVISIONS

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1.1 Provisions to Run With the Land. This Covenant sets forth
protective provisions, covenants, restrictions, and conditions,
(collectively referred to as "Restrictions"), upon and subject to
which the Property and every portion thereof shall be improved,
held, used, occupied, leased, sold, hypothecated, encumbered,
and/or conveyed. Each and all of the Restrictions shall run with
the land, and pass with each and every portion of the Property,
and shall apply to and bind the respective successors in interest
thereof. Each and all of the Restrictions are imposed on the
entire Property unless expressly stated as applicable to a
specific portion of the Property. Each and all of the

1 Restrictions are imposed pursuant to California Health and Safety
2 Code (HSC) sections 25222.1, 25355.5 and 25356.1 and run with the
3 land pursuant to HSC sections 25230 and 25355.5. Each and all of
4 the Restrictions are enforceable by the Department of Toxic
5 Substances Control.
6

7
8 1.2 Concurrence of Owners Presumed. All purchasers, lessees, or
9 possessors of any portion of the Property shall be deemed by
10 their purchase, leasing, or possession of such Property, to be in
11 accord with the foregoing and to agree for and among themselves,
12 their heirs, successors, and assignees, and the agents,
13 employees, and lessees of such owners, heirs, successors, and
14 assignees, that the Restrictions as herein established must be
15 adhered to for the benefit of future Owners and Occupants and
16 that their interest in the Property shall be subject to the
17 Restrictions contained herein.
18
19
20

21 1.3 Incorporation Into Deeds and Leases. Covenantor desires and
22 covenants that the Restrictions set out herein shall be
23 incorporated by reference in each and all deeds and leases of any
24 portion of the Property.
25
26
27

ARTICLE II

DEFINITIONS

2.1 Cap. "Cap" shall mean the protective cover used to isolate contaminated soils on the Property from human or environmental exposure. The Cap will be constructed as outlined in paragraph B.4 of this document and in the Final Remedial Design and Implementation Plan dated December 20, 1994.

2.2 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.3 Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.

2.4 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

1 2.5 Owner. "Owner" shall mean the Covenantor or its successors
 2 in interest, including heirs, and assigns, who hold title to all
 3 or any portion of the Property.
 4

5
 6 ARTICLE III
 7

8 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY
 9

10
 11 3.1 Restrictions on Development and Use. Covenantor promises to
 12 restrict the use of the Property as described in Exhibit 1 as
 13 follows:
 14

15 a. Development of the Property shall be restricted to
 16 commercial or industrial use.
 17

18
 19 b. No residence for human habitation shall be permitted on
 20 the Property.
 21

22
 23 c. No farming or grazing shall be permitted on the
 24 Property.
 25
 26
 27

- 1 d. No hospitals, day-care centers, schools, senior citizen
2 centers, or other permanently occupied non-industrial
3 human habitation shall be permitted on the Property.
4
5
6 e. The entire Property shall be covered with a composite
7 "Cap" as specified in the final RAP dated June 28, 1994
8 and in paragraph B.4, to prevent exposure of Property
9 contaminants to humans and the environment. Additional
10 walkways, buildings, and landscaping may be emplaced
11 upon the Property as long as they do not interfere with
12 the integrity of the Cap.
13
14
15 f. The Property shall not be subdivided except as allowed
16 pursuant to Section 25232(a)(2) of the Health & Safety
17 Code.
18
19
20 g. No disturbance of the soils, such as excavation,
21 grading, removal, trenching, filling, mining, or
22 drilling of gas, oil or water wells shall be permitted
23 on the Property without the express written permission
24 of the Department. Any contaminated soil brought to
25 the surface by excavation that may occur on the
26
27

1 Property shall be managed as a hazardous waste unless
2 shown otherwise by sampling and analysis.
3
4

5 h. Groundwater monitoring and Cap maintenance shall be
6 carried out pursuant to an approved Operations and
7 Maintenance (O&M) Plan. If contamination is detected
8 in groundwater or the integrity of the Cap is breached,
9 contingency activities shall be implemented pursuant to
10 the approved O&M Plan for remediation. Maintenance
11 and/or repair of the Cap must include proper handling
12 and disposal of contaminated soils if excavated.
13
14

15 i. All uses and development of the Property shall preserve
16 the integrity of the Cap and groundwater monitoring
17 system installed on the Property including periodic
18 inspection, maintenance and repair. In addition,
19 Covenantor promises to comply with the following
20 requirements:
21
22
23

24 1. The Owner shall notify the Department of each of
25 the following: 1) The type, cause, location and
26 date of any disturbance to the Cap which could
27

1 affect the ability of the Cap to contain
2 subsurface hazardous substances on the Property,
3 and 2) The type and date of repair of such
4 disturbance. Notification to the Department and a
5 request for any proposed earth moving or
6 excavation shall be made by telephone within
7 twenty-four (24) hours of the discovery of Cap
8 disturbance and by registered mail within five (5)
9 working days of both the discovery of Cap
10 disturbance and the completion of repairs.
11
12

13
14 2. The Department or its designated agents (including
15 successor agencies) shall have access to the
16 Property for the purpose of inspection,
17 surveillance, or monitoring, or other purposes
18 necessary to protect public health or safety and
19 the environment as provided in Chapters 6.5 and
20 6.8 of the California Health and Safety Code and
21 Chapter 4 of Division 7 of the Water Code.
22
23
24

25 3.2 Conveyance of Property. The Owner or Owners shall
26 provide a thirty (30) day advance notice to the Department of any
27

1 sale, lease, or other conveyance of the Property or an interest
2 in the Property to a third person. The Department shall not, by
3 reason of the Covenant, have the authority to approve,
4 disapprove, or otherwise affect any sale, lease, or other
5 conveyance of the Property except as otherwise provided by law,
6 by administrative order, or by reason of this Covenant.
7
8

9
10 3.3 Enforcement. Failure of the Owner to comply with any
11 of the requirements, as set forth in this Covenant shall be
12 grounds for the Department to require that the Owner modify or
13 remove any Improvements constructed in violation this Covenant.
14 Any violation of the Covenant shall be grounds for the Department
15 to take enforcement action, including the filing of
16 administrative, civil or criminal action against the Owner as
17 provided by law.
18
19

20 3.4 Notice in Agreements. All Owners and Occupants shall
21 execute a written instrument which shall accompany all purchase,
22 lease, sublease, rental agreements, and other conveyance
23 documents relating to the Property. The instrument shall contain
24 the following statement:
25
26
27

1 "The land described herein contains hazardous wastes and
2 hazardous substances. Such condition renders the land, the
3 Property, and the owner, lessee, or other occupant of the
4 land or property subject to the requirements, restrictions,
5 provisions, and liabilities contained in Chapter 6.5 and
6 Chapter 6.8 of Division 20 of the California Health and
7 Safety Code. This statement is not a declaration that a
8 hazard exists."
9
10

11
12 ARTICLE IV

13
14 VARIANCE AND REMOVAL OF RESTRICTIONS

15
16
17 4.1 Variance. Any Owner or, with the Owner's consent, any
18 Occupant of the Property or any portion thereof may apply to the
19 Department for a written modification from the provisions of this
20 Covenant. Such application shall be made in accordance with
21 California Health and Safety Code section 25233 or any applicable
22 provision then in effect.
23

24
25 4.2 Removal of Restrictions. Any Owner or, with the
26 Owner's consent, an Occupant of the Property or a portion
27

1 thereof, may apply to the Department to remove any of the
2 Restrictions or requirements of this Covenant as they apply to
3 all or any portion of the Property. Such application shall be
4 made in accordance with California Health and Safety Code section
5 25234 or any applicable provision then in effect.
6

7
8 4.3 Term. Unless modified or removed in accordance with
9 Section 4.1 or 4.2 above, the Restrictions and requirements of
10 this Covenant shall continue in effect in perpetuity.
11

12
13 ARTICLE V
14

15 MISCELLANEOUS
16

17
18 5.1 No Dedication Intended. Nothing set forth herein shall
19 be construed to be a gift or dedication, or offer of a gift or
20 dedication, of the Property or any portion thereof to the general
21 public or for any purposes whatsoever.
22

23
24 5.2 Notices. Whenever any person gives or serves any
25 notice, demand, or other communication with respect to this
26 Covenant, such notice, demand, or communication shall be in
27

1 writing and shall be sent simultaneously to an authorized
2 representative of the Covenantor (or Owner) and to the
3 Department, in any certified mail, with return receipt requested.
4

5

6 5.3 Partial Invalidity. If any portion of the Restriction
7 set forth herein or terms is determined to be invalid or
8 unenforceable for any reason, the remaining portion shall remain
9 in full force and effect.
10

11

12 5.4 Article Heading. Headings at the beginning of each
13 numbered article of this Covenant are solely for the convenience
14 of the parties and are not a part of the Covenant.
15

16

17 5.5 Recordation. This instrument shall be executed by the
18 Covenantor and the Department. This instrument shall be recorded
19 by the Covenantor in the County of Contra Costa within ten (10)
20 days of the date of execution.
21

22

23 5.6 References. All references to Code sections include
24 successor provisions.
25

26

27

1 IN WITNESS WHEREOF, the parties execute this Covenant as of the
2 date set forth below.
3
4
5

COVENANTOR

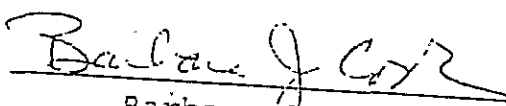
American Standard Inc.

By: 
Richard A. Kalaher *KAR*

Title: Vice President, General Counsel
and Secretary

Date: 3-20-96

DEPARTMENT OF TOXICS SUBSTANCES CONTROL

By: 
Barbara W. Cook

Title: Site Mitigation Branch Chief
Region 2

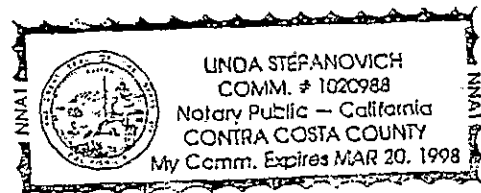
Date: 3-29-96

1 STATE OF CALIFORNIA)
2 *Contra Costa*
3 COUNTY OF ~~ALAMEDA~~)
4

5 On March 29, 1996 before me, the undersigned, a
6 Notary Public in and for said state, personally appeared
7
8 Barbara J. Cook, personally known to me or proved to me on the
9 basis of satisfactory evidence to be the person whose name is
10 subscribed to the within instrument and acknowledged to me that
11 she executed the same in her authorized capacity, and that by her
12 signature on the instrument, the Department of Toxic Substances
13 Control executed the instrument.
14

15
16 WITNESS my hand and official seal.
17
18

19 Signature Linda Stépanovich (Seal)
20
21



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

STATE OF NEW JERSEY)
COUNTY OF MIDDLESEX)

96 103969

On March 20, 1996 before me, the undersigned, a
Notary Public in and for said state, personally appeared
Richard A. Kalaher of American Standard Inc., personally known to
me or proved to me on the basis of satisfactory evidence to be
the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument, the
person, or the entity upon behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.

Signature Mary Jane Mahoney

SEAL AFFIXED

(Seal)

MARY JANE MAHONEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires August 8, 1999

LIST OF EXHIBITS

Exhibit 1 - Legal Description and Parcel Map of Property

Exhibit 2 - American Standard Products Site Map

Exhibit 3 - Lazy J Ranch and Property Map

Exhibit 4 - Potential Human and Environmental Effects of

Contaminants

Exhibit 5 - Existing Land Use and Zoning

96 103969

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

AND

ASSESSOR'S PARCEL MAP

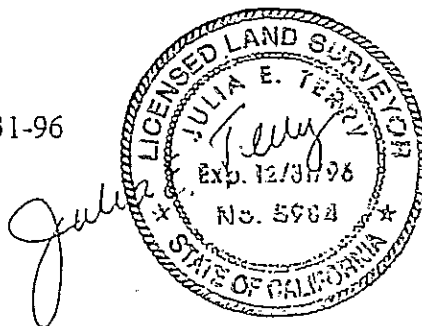
EXHIBIT '1'

A PORTION OF PARCEL 'C' OF PARCEL MAP MS 753-93, RECORDED IN BOOK 166 OF PARCEL MAPS AT PAGE 16, CONTRA COSTA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL 'C' OF SAID MAP, THENCE, ALONG THE NORTH LINE OF SAID PARCEL, SOUTH 85°17'30" EAST, 65.34 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID LINE, SOUTH 85°17'30" EAST, 790.57 FEET; THENCE LEAVING SAID NORTH LINE SOUTH 53°40'32" WEST, 46.31 FEET; THENCE ALONG A CURVE WITH A RADIUS OF 162.00 FEET, HAVING A RADIAL BEARING OF SOUTH 27°20'59" WEST, THROUGH A CENTRAL ANGLE OF 10°47'48", WITH A LENGTH OF 30.53 FEET; THENCE TANGENT TO SAID CURVE, SOUTH 51°51'13" EAST, 56.52 FEET; THENCE ALONG A TANGENT CURVE TO THE NORTHEAST, WITH A RADIUS OF 138.00 FEET, THROUGH A CENTRAL ANGLE OF 11°33'46", WITH A LENGTH OF 27.85 FEET TO THE SOUTHWESTERN LINE OF THE 15 FOOT WIDE SANITARY SEWER EASEMENT SHOWN ON SAID MAP; THENCE ALONG SAID SOUTHWESTERN LINE, SOUTH 36°20'15" EAST, 36.04 FEET TO THE SOUTHEASTERN RIGHT-OF-WAY LINE OF THE RICHMOND PARKWAY; THENCE ALONG SAID RIGHT-OF-WAY, SOUTH 53°39'45" WEST, 5.47 FEET, TO A CURVE TO THE NORTHWEST, WITH A RADIUS OF 162.00 FEET, HAVING A RADIAL BEARING OF NORTH 16°03'19" EAST, THROUGH A CENTRAL ANGLE OF 22°05'28", WITH A LENGTH OF 62.46 FEET; THENCE TANGENT TO SAID CURVE, NORTH 51°51'13" WEST, 56.52 FEET, TO A CURVE TO THE NORTHWEST WITH A RADIUS OF 138.00 FEET, THROUGH A CENTRAL ANGLE OF 15°50'37", WITH A LENGTH OF 38.16 FEET, SAID CURVE HAVING AN ENDING RADIAL BEARING OF SOUTH 53°40'32" WEST; THENCE SOUTH 53°40'32" WEST, 670.00 FEET; THENCE NORTH 40°20'29" WEST, 335.00 FEET; THENCE NORTH 6°24'27" EAST, 251.63 FEET TO THE TRUE POINT OF BEGINNING.

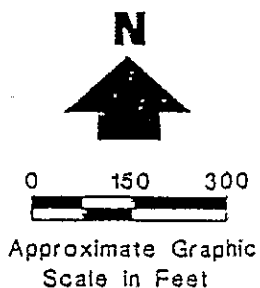
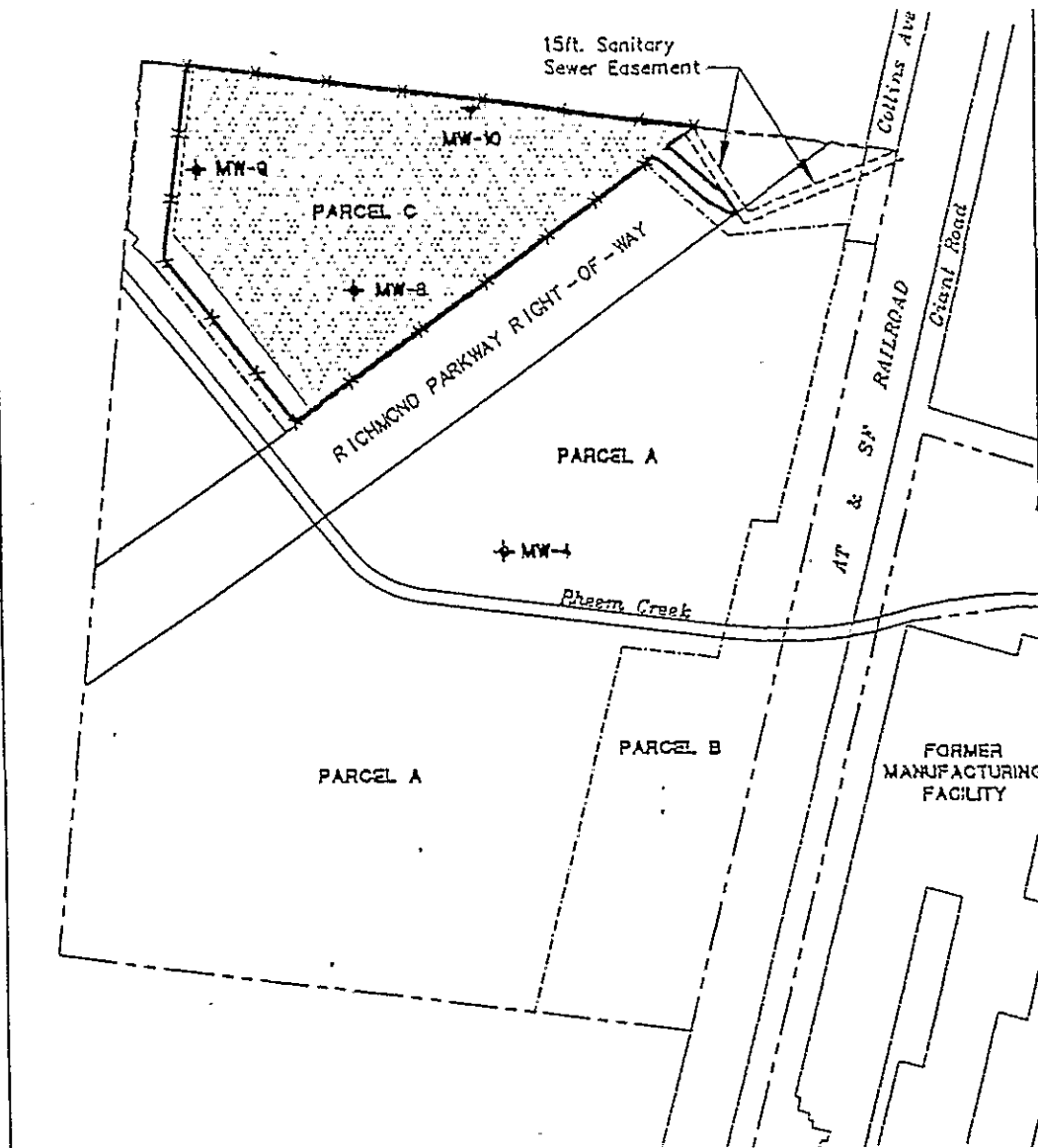
ALL DISTANCES LISTED ARE GROUND DISTANCES, TO OBTAIN GRID DISTANCES, MULTIPLY BY 0.9999358.

PREPARED BY: JULIA E. TERRY, PLS
FEBRUARY 7, 1996
LICENSE EXPIRES 12-31-96



96 103963

96 103963



Legend:

- Lazy J Ranch Site Boundary
- Parcel Boundary
- Portion of Parcel C Subject To Deed Restriction as defined in Exhibit 1
- *-*-* Fence
- Containment Cover
- Groundwater Monitoring Well Location

Notes:

1. All well locations are approximate.
2. Rheem Creek flows from east to west.

Reference:

Parcel Map MS 753-93, 166 PM 17,
prepared by PLS Surveys, Inc.

Kennedy/Jenks Consultants

American Standard Products Site
Lazy J Ranch Operable Unit
Richmond, California

Containment Area

K/J 930047.05
February 1996

Exhibit 3

140604930047.0517FEB96KJ3

EXHIBIT 4

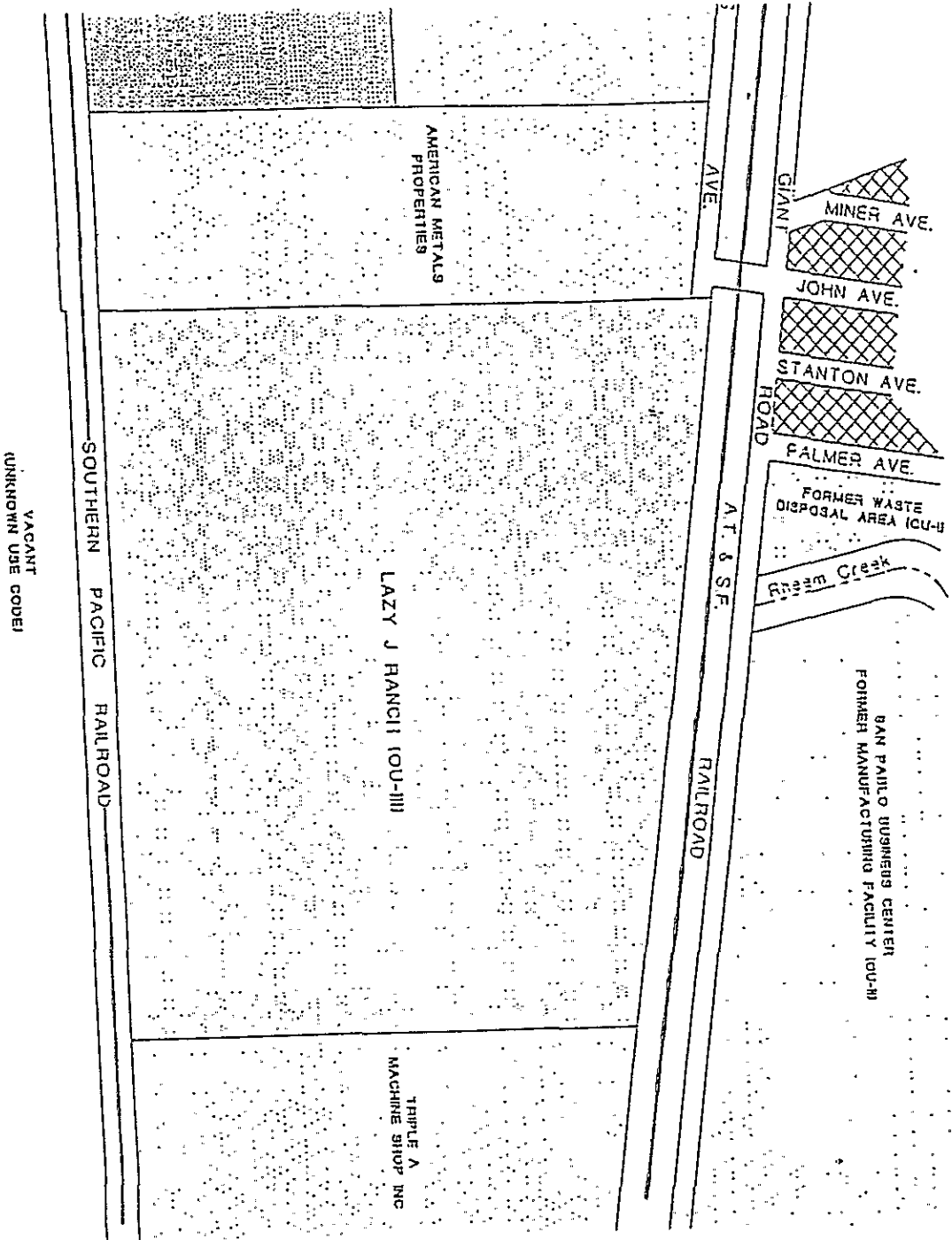
POTENTIAL HEALTH EFFECTS OF PROPERTY CONTAMINANTS

Lead. Depending on the dose, exposure to lead via ingestion or inhalation may produce anemia, fatigue, headache, aching bones and muscles, abdominal pains, and constipation. Short-term exposure to a sufficient dose of lead can cause reversible kidney damage. Chronic lead toxicity may affect the red blood cells and their precursors, the central and peripheral nervous systems and the kidneys (Sax, N.I., 1984, Dangerous Properties of Industrial Materials, 6th edition, New York; Van Nostrand Reinhold Company). The most serious effects associated with markedly elevated blood levels of lead are severe neurotoxic effects that include irreversible brain damage, as presented by occurrence of acute or chronic encephalopathic symptoms. Lead is listed as a reproductive toxicant by the State of California under Proposition 65. When lead is ingested, much of it passes through the body unabsorbed, and is eliminated in the feces. Most of the lead that is absorbed goes to the liver is excreted, in part, in the bile. For this reason, larger amounts of lead are usually necessary to cause toxic effects by this route than by inhalation, and a longer period of exposure is usually necessary to produce symptoms. Adults absorb about 5-15% of ingested lead and retain less than 5%. Children absorb about 50% and retain about 30%. (Lewis, R.J., 1991, Hazardous Chemicals Desk Reference, 2nd edition, New York: Van Nostrand Reinhold Company).

Zinc. Zinc may be absorbed by inhalation or ingestion. Approximately 80% of ingested zinc is excreted in the feces. Zinc and zinc compounds at sufficient concentrations are human skin and eye irritants, while inhaling zinc powder(s) can cause pulmonary edema (Sax, 1984). Zinc is an essential element of human nutrition and is distributed throughout the body. The major concern for zinc is its effect on aqueous biota; lethal doses of zinc cause death through gill necrosis and hypoxia (Rand, Gary and Petrocelli, Sam, eds. 1985, Fundamentals of Aquatic Toxicity, Washington, D.C.: Hemisphere Publishing).

96 103963

96 103963



0 100 200 400
Approximate Graphic Scale
in Feet

Legend:

- Light Industrial
- Industrial
- Heavy Industrial
- Residential

Kennedy/Jenks Consultants
American Standard Products Site
Remedial Action Plan
Lazy J Ranch Operable Unit
Richmond, California
Existing Land Use and Zoning